

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME ELI McCOY,  
Petitioner,  
v.  
SACRAMENTO CO. JAIL,  
Respondent.

No. 2:22-cv-2182 KJM DB P

ORDER

Petitioner, a pretrial detainee proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. §2254. In an order filed January 12, 2023, this court found that petitioner's claims should be raised, if at all, in a civil rights action. Based on the differences between civil rights and habeas cases, this court recommended this action be dismissed without prejudice to its renewal as a civil rights action.

Petitioner now seeks to convert this action to a civil rights action. However, it has come to the court's attention that prior to filing the present action in December 2022, petitioner filed a separate habeas action in this court in which he makes the same allegations he makes here.<sup>1</sup> That case is McCoy v. Sacramento Co. Jail, et al., 2:22-cv-1170 AC P. Petitioner recently informed the court in that prior case that he wishes to convert it to a civil rights action.

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<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Due to the duplicative nature of the present action, this court will recommend that this  
2 action be dismissed.

3 Accordingly, IT IS HEREBY ORDERED that


4 1. The findings and recommendations filed January 12, 2023 are vacated; and

5 2. Petitioner's motion to convert this action to a civil rights case (ECF No. 8) is denied as  
6 moot.

7 Further, IT IS RECOMMENDED that this action be dismissed without prejudice. See  
8 Fed. R. Civ. P. 41(b).

9 These findings and recommendations are submitted to the District Judge assigned to this  
10 case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after being served  
11 with these findings and recommendations, plaintiff may file written objections with the court.  
12 The document should be captioned "Objections to Magistrate Judge's Findings and  
13 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
14 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
15 Cir. 1991).

16 Dated: January 31, 2023

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19 DEBORAH BARNES  
20 UNITED STATES MAGISTRATE JUDGE  
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